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Forty-eighth session

REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA OF THE FORTY-EIGHTH SESSION

OBSERVER STATUS FOR THE PERMANENT COURT OF ARBITRATION IN THE GENERAL ASSEMBLY

Letter dated 31 May 1993 from the Permanent Representative of Italy to the United Nations addressed to the Secretary-General

I have the honour to address you, upon the instructions of my Government, which is party to the Hague Convention for the Pacific Settlement of International Disputes of 1899, to request, in accordance with rule 13 of the rules of procedure of the General Assembly, the inclusion in the provisional agenda of the forty-eighth session of the General Assembly of an item entitled "Observer status for the Permanent Court of Arbitration in the General Assembly".

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum concerning the request for inclusion in the provisional agenda of the forty-eighth session of the General Assembly of the question of observer status for the Permanent Court of Arbitration is annexed to the present letter.

(Signed) Francesco Paolo FULCI
Ambassador

ANNEX

Explanatory memorandum

The Permanent Court of Arbitration, an intergovernmental institution since 1899

The Permanent Court of Arbitration, which was established in 1899 by the First Hague Convention for the pacific settlement of international disputes and has its seat in the Peace Palace in the Hague, is the oldest intergovernmental institution in existence that is dedicated to the task of resolving disputes between States. Article 1 of the 1899 Convention (as well as Article 1 of the 1907 Convention) reads:

> "With a view to obviating as far as possible recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences."

Besides arbitration, which is the settlement mechanism most referred to, the Court also offers a broad range of international dispute settlement services including good offices, mediation, commissions of inquiry and conciliation.

Links between the Permanent Court of Arbitration and the United Nations

There are numerous links between the United Nations and the Permanent Court of Arbitration. Their origin is historic, they have been enshrined in the Charter and are firmly rooted in the shared objective of maintaining international peace.

Article 4 of the Statute of the International Court of Justice stipulates that members of this Court are elected by the General Assembly and the Security Council from a list of candidates nominated by the national groups of the Permanent Court of Arbitration. The Permanent Court of Arbitration is the only institution, other than the organs of the League of Nations and the United Nations, to be mentioned in the Charter by name.

The Permanent Court of Arbitration offers a unique fund of expertise and experience for four of the seven means of peaceful settlement of disputes listed in Article 33 of the Charter (inquiry, mediation, conciliation and arbitration). Therefore, the Court already plays an active role in implementing Article 33 of the Charter.

The Arbitration Rules prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by the General Assembly on 15 December 1976 (Resolution 31/98) entrust the Secretary-General of the Permanent Court of Arbitration with the function of maintaining the integrity of the arbitral process: in particular, they authorise the Secretary-General to designate an "appointing authority" for the purpose of appointing members of arbitral tribunals for example upon failure of one of the parties to do so or in case the parties fail to reach an agreement on the composition of the tribunal.

When the General Assembly, in 1989, declared the period 1990-1999 "United Nations Decade of International Law" an important commemorative link was established between the United Nations and the Permanent Court of Arbitration, as the end of the Decade will coincide with the celebration by the Permanent Court of Arbitration of the completion of its first 100

years of service to the international community. Furthermore, one of the main purposes of the Decade is to further acceptance of and respect for international law and to promote means and methods for the peaceful settlement of disputes between States.

Adaptation of the Court to present requirements

The Permanent Court of Arbitration has recently taken a series of initiatives aimed at increasing awareness by States of the facilities and services offered by the International Bureau and at improving and modernizing the functioning of its system of disputes settlement.

One of these initiatives was the adoption by the Administrative Council on 20 October 1992 of new Optional Rules for Arbitrating Disputes between Two States. The aim of these new Rules - which are based on the UNCITRAL Arbitration Rules - is to offer a modern set of Rules to States wishing to submit disputes to the Permanent Court of Arbitration.

Moreover, the International Bureau of the Court is making great efforts, in cooperation with the depositary State of the Hague Conventions, to encourage States which are not yet parties to the Conventions to adhere to them.

The Court is actively participating in the programme of the Decade of International Law. It is organising for example a conference of all its "Members", which is to take place in September 1993. The objectives of the conference will be to discuss the future of the Court and the preparation of a possible third Hague Convention for the pacific settlement of international disputes in 1999.

Conclusion

The States Parties to the Hague Conventions for the pacific settlement of international disputes feel that the creation of a permanent institutional relation between the Permanent Court of Arbitration and the United Nations will enable both organisations to strengthen the existing links. It will enable the Permanent Court of Arbitration to:

- participate more actively in the programme of the Decade of International Law;
- supplement more effectively the functions of the International Court of Justice;
- intensify its cooperation with the United Nations in all appropriate fields.

Therefore, the States Parties to the Hague Conventions consider that both the United Nations and the Permanent Court of Arbitration would benefit extensively from the granting of observer status to the Permanent Court of Arbitration in terms similar to those that have been prescribed for other intergovernmental organisations.

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REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA OF THE FORTY-EIGHTH SESSION

QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

Letter dated 24 June 1993 from the Chargé d'affaires a.i. of the Permanent Mission of New Zealand to the United Nations addressed to the Secretary-General

I have the honour to request, in accordance with rule 13 of the rules of procedure of the General Assembly, the inclusion in the provisional agenda of the forty-eighth session of the General Assembly of an item entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice".

In accordance with rule 20 of the rules of procedure, an explanatory memorandum concerning the request is annexed to the present letter.

(Signed) John McKINNON
Chargé d'affaires a.i.

ANNEX

Explanatory Memorandum

RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

United Nations operations around the world are expanding and intensifying. As a consequence, personnel involved in and associated with UN operations are increasingly deployed in situations where they are subject to physical attack. In his "Agenda for Peace" the Secretary-General drew attention to the "unconscionable increase in the number of fatalities" amongst UN personnel and observed in this regard that "As the variety and scale of the threat widens, innovative measures will be required to deal with the dangers facing United Nations personnel".

Recent tragic events in Somalia and Cambodia, among others, have underlined the urgent need to develop such measures.

The related issues of the safety and status of UN personnel and the responsibility of States to ensure their protection have been discussed in a number of United nations forums:

- On 31 March the Security Council issued a Presidential Statement (S/25493) calling, inter alia, for States and the parties to various conflicts around the world to take all possible steps to ensure the safety of UN personnel. The Council called for the Secretary-General to report on the adequacy of current arrangements for the safety or UN personnel and to make appropriate recommendations on enhancing the safety and security of UN personnel.

- The Special Committee on Peace-keeping Operations has recently drawn attention to the need for further steps to enhance the status and safety of United Nations personnel involved in peacekeeping operations.

- The need for effective arrangements to ensure the safety and security of UN personnel has also been raised in the context of the Open-ended working group of the General Assembly which is considering "Agenda for Peace".

As is evident from the comments submitted by New Zealand (S/25667) in relation to the report called for by the Security Council on 31 March 1993, we consider that in order to address the problems currently faced in this area a range of measures may need to be elaborated in relevant bodies of the United Nations.

As recent events have demonstrated, there is a particular and urgent need to focus specific attention on the question of responsibility for attacks on UN and associated personnel (whether they are peacekeepers or personnel deployed for peace-making, preventive diplomacy, peace-building or for humanitarian purposes) and the consequential question of measures to ensure that those who carry out such attacks are brought to speedy trial under an appropriate legal regime.

The existing legal instruments and customary international law relevant to this matter give rise to anomalies and inadequacies. As a result there is a serious risk that those who direct violence against such personnel will believe that they can proceed with impunity, especially in situations where the state or states concerned are unable to exercise jurisdiction in order to ensure the safety and security of such personnel, or where a state is unwilling to discharge its responsibilities in this regard.

While the Security Council has responded in various ways to attacks made on UN personnel in certain situations (Resolution 804 on Angola, Resolution 792 on Cambodia and Resolution 837 on Somalia), these responses demonstrate the limited options available in the absence of a more concrete legal framework to effectively deter, prosecute and punish such violence.

New Zealand believes that the United Nations should have the means to hold personally responsible those who attack or commit other acts of violence against UN and associated personnel. In this regard, the protections established in the Geneva Conventions for offences against civilians and military personnel who for various reasons are no longer combatants (such as wounded, prisoners, and medical personnel) should be noted. New Zealand believes that international law relating to United Nations forces and other relevant personnel should be no less effective than the rules of international law protecting soldiers actually engaged in fighting a war.

A further situation which needs to be addressed is where United Nations forces are deployed under mandates which require them to keep the peace in situations of armed conflict between a government and a faction or movement within a state. It is essential that those who carry out attacks against UN and associated personnel in such situations should not be able to escape prosecution and punishment. However, under classical principles of international law, entities which are not states are not subject to international law and are outside its jurisdiction. New Zealand believes that there is a clear need for the innovative development of international law in this area.

New Zealand considers that the issues referred to above are among those that need to be addressed by the General Assembly under the item it proposes for inclusion in the provisional agenda.